

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

S&W FORECLOSURE CORP.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:09CV353 CDP
)	
DAVID OKENFUSS, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before me on my review of the file. On September 25, 2009, I sent out an Order directing plaintiff to obtain service on David and Stephanie Okenfuss. However, that Order was in error as to Stephanie Okenfuss as she waived service of the complaint on July 7, 2009 [#11]. Plaintiff must still obtain service on David Okenfuss, however, and has requested an alias summons to do so. My September 25, 2009 Order also directed the Internal Revenue Service to move for default judgment against all defendants. However, no proper proof of service on Stephanie Okenfuss as to the IRS' cross-claim appears in the file. Now that Stephanie Okenfuss has waived service of the complaint, the IRS may serve her with its cross-claim under Rule 5 of the Federal Rules of Civil Procedure, if it

has not already served her under Fed. R. Civ. P. 4.¹ However, the Village of Carriage Crossing and David Okenfuss remain in default on the IRS' cross-claim, and the IRS should still move for default with respect to those two cross-defendants.

Accordingly,

IT IS HEREBY ORDERED that the Memorandum and Order dated September 25, 2009 [#14] is vacated only in part as follows:

- 1) Plaintiff is not required to request an alias summons for service of process upon Stephanie Okenfuss; and
- 2) Cross-claimant Internal Revenue Service is not required to file motions for entry of default and for default judgment against Stephanie Okenfuss.


The remainder of the Memorandum and Order dated September 25, 2009, remains in full force and effect.

IT IS FURTHER ORDERED that cross-claimant Internal Revenue Service shall, within five days of the date of this Order, either file proof of service of its cross-claim against Stephanie Okenfuss or serve Stephanie Okenfuss with its

¹As the IRS correctly noted in its motion for extension of time [#5], as of June 24, 2009 service of its cross-claim on Stephanie Okenfuss under Fed. R. Civ. P. 5 was not proper because Stephanie Okenfuss had yet to be properly served with the complaint under Fed. R. Civ. P. 4. Now that Stephanie Okenfuss has waived service of the complaint, the IRS may serve her with a copy of the cross-claim under Fed. R. Civ. P. 5.

cross-claim under Federal Rule of Civil Procedure 5.

IT IS FURTHER ORDERED that plaintiff shall, within fourteen (14) days of the date of this order, file appropriate motions for entry of default and for default judgment against defendant Stephanie Okenfuss, supported by all necessary affidavits and documentation, as well as proposed orders for the Court's consideration.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 29th day of September, 2009.